Supreme Court, U.S.
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87-243

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

ANTHONY A. BROWN

Petitioner,

v.

OFFICER L. PATTERSON; CITY OF HARVEY; COUNTY OF COOK; and RICHARD J. ELROD

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether an individual may bring a claim under 42 U.S.C. 1983 against law enforcement officers and their municipalities for arresting and incarcerating him based upon a warrant that neither describes nor names said individual and without the benefit of a probable cause hearing?

LIST OF PARTIES

The original parties in the District Court were the Plaintiff Anthony A. Brown and the Defendants L. Patterson, an officer for the City of Harvey, the City of Harvey, Sheriff Richard J. Elrod of Cook County, and County of Cook. Anthony A. Brown as the appellant appealed the dismissal of all Defendants to United States Court of Appeals.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Anthony A. Brown, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in the above entitled proceeding on June 12, 1987.

OPINION BELOW

The opinion of the Court of Appeals will be reported in the Federal Reporter 2d. The opinion is attached as an appendix hereto App. 1A, *infra*. Also attached is the unreported opinion of the District Court App. 9A, *infra*.

JURISDICTION

The opinion of the Court of Appeals was issued on June 12, 1987. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The District Court had jurisdiction pursuant to 28 U.S.C. 1343(3) and the Court of Appeals pursuant to 28 U.S.C. § 1291.

STATUTE INVOLVED

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom or useage, of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This case was disposed of in the District Court on a motion to dismiss for failure to state a claim upon which relief may be granted. Therefore, for the purpose of this petition, the facts of this case are not disputed.[1]

> In August 1984 a judicial officer in Cook County, Illinois had issued a warrant for the arrest of Anthony Moseley for attempted burglary and for possession of burglary tools. The warrant listed Moseley's address as 2822 South Burnham, in Chicago, and described him as a black male born on July 30, 1960. The validity of the warrant is not contested. [2] Although not shown on the warrant, Moseley has an alias, "Anthony Brown." The policy of the then Sheriff of Cook County, Richard Elrod, was to place the aliases of persons named on warrants and the Law Enforcement Advisory Data System (LEADS), a computerized data bank accessible by police officers. Three months after the warrant was issued, defendant Patterson, a police officer of Harvey, Illinois, stopped the plaintiff, Anthony Brown, for a traffic violation. The plaintiff's driver's license showed his address as 514 E. 154th Street, Phoenix, Illinois, and his birthdate as July 18, 1960. The Village of Phoenix is an enclave in Harvey, a town just south of Chicago. Anthony Brown is black.

---

1. Judge Posner's opinion for United States Court of Appeals 7th Circuit adequately states the facts of the First Amended Complaint.

2. The validity of the warrant was not contested as to Anthony Moseley but certainly was contested as to the petitioner Anthony Brown. See App. 14.

> Patterson arrested him, suspecting that he was Anthony Moseley (which Brown denied), and took him to the Harvey police station. He was held there for 24 hours, then transported to the Cook County Jail, where he spent another 24 hours before posting a $7,500 bond and being released. In neither lock-up was he fingerprinted or was any other effort made to determine whether he was really Moseley.
>
> Brown was charged with Moseley's offenses. Two months later he appeared in court to answer the charges, and was discharged with the notation that the wrong defendant was in court. The warrant for Moseley's arrest was reissued. A week later three police officers arrived at Brown's home in Phoenix to arrest him again on the warrant for Moseley. When Brown showed them the court "half-sheet" dismissing the charges against him, they decided not to arrest him; but ever since this incident Brown has been careful to retain the half-sheet on his person, lest he again be threatened with arrest pursuant to the warrant for Moseley. App. 2A-3A.

The petitioner Brown filed a First Amended Complaint naming Officer Patterson, a city of Harvey police officer, City of Harvey, County of Cook and Richard Elrod, the Sheriff of Cook County, as defendants (R.16; App. 18A). This Complaint alleged that these defendants caused Brown to be illegally arrested and detained thereby violating his due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

The City of Harvey was named as defendant for their actions in having a policy of arresting individuals pursuant to a warrant when the said individual's name does not appear on the warrant. This policy further provided that the City of Harvey failed to

require any investigation to establish the arrested persons identity, either by fingerprinting or otherwise.

The Defendants Elrod and the County of Cook were named for their actions in having a policy of placing the alias of individuals named on warrants into the Law Enforcement Advisory Data System (LEADS), regardless of whether the alias appears on the warrant, and for encouraging and influencing other law enforcement agencies to detain and arrest individuals on this alias information.

On August 29, 1986, Judge Susan Getzendanner of the United States District Court granted all of the defendants motions to dismiss the plaintiffs First Amended Complaint.

The trial court in its opinion relied upon *Baker vs. McCollan*, 443 U.S. 137 (1979) and stated the following:

> Defendants have moved to dismiss on the ground that the Constitution nowhere requires an alias to appear on a warrant, and that where the police reasonably and in good faith believe an innocent person to be a suspect named on a facially valid warrant, the arrest of that innocent person, while possibly tortious under state law, is not unconstitutional, although the issue is close, the Court agrees. App.10A-11A.

The petitioner filed an appeal of this decision and the Court of Appeals affirmed on June 12, 1987. Judge Posner writing for the Court stated the following:

> The whole business is thoroughly unedifying. There ought to be a remedy for a false arrest and incarceration, although the parties seem agreed that, in all likelihood, there is none under state law in the circumstances of this case because of the broad tort immunities that law en-

forcement officers in Illinois enjoy. See Ill. Rev. Stat. ch. 85, Sec. 2-202 to 2-205; *Wilson vs. Hunk*, 51 Ill. App. 3d 1030, 367 N.E. 2d 478 (1977). Yet jurors and draftees are paid; and one might have thought persons falsely arrested through no fault of their own (for Anthony Brown can hardly be blamed for the fact that a black criminal of his approximate age decided to take "Anthony Brown" as an alias) equally deserving of compensation, for the embarrassment, fear, and loss of time resulting from the arrest. Such liability might induce the authorities to explore the possibility of catching fugitives by means less likely to involve the arrest (and sometimes rearrest, see *Johnson v. Miller*, 680 F.2d 39,40 (7th Cir. 1982) of innocent people. The problem illustrated by this case is potentially a serious one. The Chicago telephone book lists 15 Anthony Browns and 4 Tony Browns. No doubt some of them are both young and black and therefore covered, at least loosely, by the description in the warrant. Goodness knows how many of them have been or will be arrested in the quest for Anthony Moseley. However, the only question before us is whether Brown has a remedy under section 1983 against any of the defendants. App. 3A.

...

We begin with Officer Patterson. If he acted reasonably in executing the warrant, even though the address and birthdate on it did not match the address and birthdate on Anthony Brown's license, then he cannot be held liable for an unreasonable seizure of Brown's person in violation of Fourth Amendment principles and hence of section 1983. This conclusion is established by *Hill v. California*, 401 U.S. 797, 803-05 (1971). The police had probable cause to arrest Hill, but mistakenly

> arrested Miller instead, thinking he was Hill. He told the officers he was Miller, and he was, but the mistaken arrest was "a reasonable response to the situation facing them at the time," *id.* at 804, so the Fourth Amendment was satisfied.
>
> As for defendant Elrod, the Sheriff of Cook County when Brown was arrested and jailed, we can find nothing unreasonable in a policy of placing the aliases of persons named in outstanding warrants in the LEADS data bank. The initial effort to execute the warrant against Moseley failed. He had fled the coop. He was presumably avoiding arrest by traveling under his alias, which fortunately was known to the authorities. The prudent thing to do was to make his alias available to all police officers in the area. If this is unreasonable, any person named in a warrant can avoid arrest indefinitely by the simple expedient of using an alias; the police could not be told about it. App. 6A.

Judge Posner concluded his opinion affirming the District Court by stating that:

> ...as we said earlier, we think there should be financial compensation for a person forced through no fault of his own to undergo the indignity of a false arrest and, until Moseley is arrested, to carry on his person at all times proof that he is not Moseley. At the very least we think that Brown should be reimbursed for whatever out-of-pocket expenses he incurred to raise bail and in missing work (if he did miss work.) One might have thought that the institutional defendants would offer such compensation simply as a gesture of decency (maybe this opinion will induce them to do so); or in a

prudent effort to forestall a suit costly to defend, by assuaging Brown's natural feeling of indignation at being arrested and charged for another man's crimes. Decency and institutional self-interest sometimes coincide. But it is not within our province to apply a remedy other than the limited, and in-applicable, remedy that federal law provides for false arrest and imprisonment. App. 7A.

REASONS FOR GRANTING THE WRIT

1. This Court in *Arkansas v. Sanders* 442 U.S. 753, at 759 (1979) stated:

> The prominent place the warrant requirement is given in our decisions reflects the "basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of Government." By requiring that conclusions concerning probable cause and the scope of a search "*be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime*, we minimize the risk of unreasonable assertions of the executive" (emphasis added). See also *Steagald v. United States* 451 U.S. 204 (1981).

More recently this Court in *United States v. Leon* 468 U.S. 897 at 914 stated:

> The Courts must also insist that the magistrate purport to "perform his 'neutral and detached' function

> and not serve merely as a rubber stamp for the police." A magistrate failing to "manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application and who acts instead as an "adjunct law enforcement officer" cannot provide valid authorization for an otherwise unconstitutional search. (cites omitted).

The *Brown* decision effectively destroys this careful and delicate balance between the functions of law enforcement agencies and the judiciary. The opinion allows the police officer to set the parameters and scope of warrants that were traditionally left solely to judicial officers.

Judge Posner's opinion makes light of this important judicial function of determining and approving who is to be named on the warrant. The opinion states:

> ...But what protection would it be to the Anthony Browns of this world to have a suspect's aliases listed in the warrant along with the suspect's real name? If it was necessary in order to protect arresting officers or their superiors from suit should they arrest a person with the same name as the suspect's alias, aliases would no doubt be listed on warrants routinely. App. 6A.

This skewed approach by the Seventh Circuit is exactly what is disfavored by the principles announced in *United States v. Leon* supra, and should mandate review by this Court.

Under *Brown*, a police officer now no longer has to seek judicial approval for who will be named on a warrant as long as a judicial officer approves a name of some individual. In the case at bar the petitioners name was not indicated anywhere on the warrant. The officer expanded the scope of the warrant by

placing the petitioners name along with the original name in the LEADS computer. Thus, the warrant that might not meet the standards of a magistrate was effectively sanctified by the LEADS computer.

2. The *Brown* opinion effectively allowed the information contained in the LEADS computer and the Moseley warrant to justify as a matter of law the incarceration of the petitioner for two days without any judicial review. The defects of each basis (warrant not naming Brown and LEADS computer) for arrest and incarceration is cured by the other.

If an individual is to be arrested pursuant to a warrant, he must be named in the warrant. *West v. Cabell* 153 U.S. 78 (1894); *Johnson v. Miller* 680 F.2d 42 (7th Cir. 1982). In this case, the pleading indicates the petitioner was not named in the warrant. The Court of Appeals has now indicated, however, this fact is irrelevant because he was named in the LEADS computer.

Further, although the petitioner was arrested pursuant to this information, he was detained for 48 hours before being brought before a judge. Normally a delay of two days before being brought before a judge would violate his right to a prompt probable cause hearing. See *Gerstein v. Pugh* 420 U.S. 103 at 125 (1978) and *Llaquno v. Mingey* 763 F.2d 1560 (7th Cir. 1985). This need for a prompt hearing has now been excused if there is a warrant, regardless of who the individual is that is named on it.

Law enforcement agencies must not be allowed to cure the defects on the face of the warrant simply by using the LEADS Computer. Alternatively, they should not be allowed to substitute a prompt probable cause hearing for the individual in custody with the hearing for the individual noted on the warrant. This procedure in effect allows innocent individuals to languish in jail for days without the protection of any of the judicial

safeguards mandated by the U.S. Constitution.

The petitioner submits that this drastic departure from the intent of *Baker v. McCollen*[3] supra makes the review by this court appropriate and necessary.

3. The petitioner further submits that the fact that the individual's name is not on the warrant is more than a minor distinction as Judge Posner indicated in the *Brown* opinion. This statement is in direct conflict with *Johnson v. Miller* supra another opinion written by Judge Posner. In that case the Plaintiff was arrested pursuant to a warrant which named her. The description on the warrant, however, indicated that the wanted individual was of the opposite race (Plaintiff was white, description was that of a black female.)

Judge Posner stated in *Johnson* that the description on the warrant was not controling:

> We do not think the arresting officer, Miller, can be said to have acted wrongfully merely because the warrant he executed contained a description that did not match the appearance of Miss Johnson. *For Miller the main thing was that the name was right.* (emphasis added). Johnson 680 F.2d 39, 41 (1982 7th Cir.)

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[3] In affirming the United States District Court, the Court of Appeals placed a great deal of reliance on *Baker* supra. The fact that the individual name appears on the warrant gave the law enforcement agencies probable cause to arrest him and proceed to hold him without any further investigation. *Baker* at 143.

The difference between *Baker* and the case at Bar is that the Plaintiff in *Baker* received a prompt probable cause hearing at the time that the warrant was issued where the Petitioner herein received the benefit of no hearing whatever.

Petitioner also submits that Brown is conflict with other opinions outside the 7th Circuit[4]. Review by this Court is necessary to resolve this conflict.

CONCLUSION

For these various reasons, this petition for certiorari should be granted.

Respectfully submitted

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4. See *United States v. Doe*; 703 F.2d 745 (3rd Cir. 1983); *Jenkins v. Rafferty*, 618 F. Supp.30 (D.N.J. 1984)

APPENDIX

In the

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 86-2616
ANTHONY A. BROWN,

Plaintiff-Appellant,

v.

OFFICER L. PATTERSON, et at.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 85 C 6859- Susan Getzendanner, Judge.

ARGUED APRIL 13, 1987 — DECIDED JUNE 12, 1987

Before BAUER, *Chief Judge*, POSNER, *Circuit Judge*, and FAIRCHILD, *Senior Circuit Judge*.

POSNER, *Circuit Judge*. Anthony Brown was arrested by a police officer who was executing a warrant for the arrest of Anthony Moseley, alias "Anthony Brown." After spending 48 hours in jail, Brown was released on bail. He brought this suit under 42 U.S.C. § 1983 against the arresting officer and others, charging that his arrest and incarceration violated the principles

of the Fourth Amendment, which have been held applicable to state and local government by virtue of the due process clause of the Fourteenth Amendment. The defendants filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted (see Fed. R. Civ. P. 12(b)(6)). The judge granted the motion, and this appeal followed.

In August 1984 a judicial officer in Cook County, Illinois had issued a warrant for the arrest of Anthony Moseley for attempted bruglary and for possession of burglary tools. The warrant listed Moseley's address as 2822 South Burnham, in Chicago, and described him as a black male born on July 30, 1960. The validity of the warrant is not contested. Although not shown on the warrant, Moseley has an alias, "Anthony Brown." The policy of the then Sheriff of Cook County, Richard Elrod, was to place the aliases of persons named in warrants in the Law Enforcement Advisory Data System (LEADS), a computerized data bank accessible by police officers. Three months after the warrant was issued, defendant Patterson, a police officer of Harvey, Illinois, stopped the plaintiff, Anthony Brown, for a traffic violation. The plaintiff's driver's license showed his address as 514 E. 154th Street, Phoenix, Illinois, and his birthdate as July 18, 1960. The Village of Phoenix is an enclave in Harvey, a town just south of Chicago. Anthony Brown is black.

Patterson arrested him, suspecting that he was Anthony Moseley (Which Brown denied), and took him to the Harvey police station. He was held there for 24 hours, then transported to the Cook County Jail, where he spent another 24 hours before posting a $7500 bond and being released. In neither lock-up was he fingerprinted or was any other effort made to determine whether he was really Moseley.

Brown was charged with Moseley's offenses. Two months later he appeared in court to answer the charges, and was

discharged wth the notation that the wrong defendant was in court. The warrant for Moseley's arrest was reissued. A week later three police officers arrived at Brown's home in Phoenix to arrest him again on the warrant for Moseley. When Brown showed them the court "half-sheet" dismissing the charges against him, they decided not to arrest him; but ever since this incident Brown has been careful to retain the half-sheet on his person, lest he again be threatened with arrest pursuant to the warrant for Moseley.

The whole business is thoroughly unedifying. There ought to be a remedy for a false arrest and incarceration, although the parties seem agreed that, in all likelihood, there is none under state law in the circumstances of this case because of the broad tort immunities that law enforcement officers in Illinois enjoy. See Ill. Rev. Stat. Ch. 85, ¶¶ 2-202 to 2-205; *Wilson v. Hunk*, 51 Ill. App. 3d 1030, 367 N.E.2d 478 (1977). Yet jurors and draftees are paid; and one might have thought persons falsely arrested through no fault of their own (for Anthony Brown can hardly be blamed for the fact that a black criminal of his approximate age decided to take "Anthony Brown" as an alias) equally deserving of compensation, for the embarrassment, fear, and loss of time resulting from the arrest. Such liability might induce the authorities to explore the possibility of catching fugitives by means less likely to involve the arrest (and sometimes rearrest, see *Johnson v. Miller*, 680 F.2d 39, 40 (7th Cir. 1982) of innocent people. The problem illustrated by this case is potentially a serious one. The Chicago telephone book lists 15 Anthony Browns and 4 Tony Browns. No doubt some of them are both young and black and therefore covered, at least loosely, by the description in the warrant. Goodness knows how many; of them have been or will be arrested in the quest for Anthony Moseley. However, the only question before us in whether Brown has a remedy under section 1983 against any of

the defendants.

He named as defendants (besides Patterson) the City of Harvey, Cook County, and Sheriff Elrod. None is culpable in the sense necessary to create liability under section 1983. We begin with Officer Patterson. If he acted reasonably in executing the warrant, even though the address and birthdate on it did not match the address and birthdate on Anthony Brown's license, then he cannot be held liable for an unreasonable seizure of Brown's person in violation of Fourth Amendment principles and hence of section 1983. This conclusion is established by *Hill v. California*, 401 U.S. 797, 803-05 (1971). The police had probable cause to arrest Hill, but mistakenly arrested Miller instead, thinking he was Hill. He told the officers he was Miller, and he was, but the mistaken arrest was "a reasonable response to the situation facing them at the time," id. at 804, so the Fourth Amendment was satisfied. For cases applying this principle in circumstances similar to those here see, e.g., *Johnson v. Miller*, supra, 680 F.2d at 41-42; *Gero v. Henault*, 740 f.2d 78, 84-85 (1st Cir.1984); *Hill v. Bogans*, 735 F.2d 391, 393 (10th Cir. 1984); *United States v. Golver*, 725 F.2d 120, 122-23 (D.C. Cir. 1984); *United States v. McEachern*,675 F.2d 618, 621 (4th Cir. 1982); cf. *Arnsberg v. United States*, 757 F.2d 971, 981 (9th Cir. 1985).

If like many criminals Anthony Moseley has an alias-and there is no suggestion that he does not, in fact,use the alias of "Anthony Brown" - it would not be surprising if he also has a false address and birthdate. The birthdates of Moseley and Brown are only 12 days apart, and they are both black males. Harvey, where Brown was arrested, surrounds Phoenix, where he lives, and is near Chicago, where Moseley lives (or lived when the warrant was issued-he presumably decamped shortly afterward, or he would have been arrested). Patterson would have been imprudent not to take in Brown for further investiga-

tion. The fact that Brown denied being Moseley was only to be expected, even if Brown was Moseley. If, as here, an arrest warrant, regular on its face, is duly issued, the officer executing the warrant does not violate the Fourth Amendment by arresting the wrong person, unless the officer acts unreasonably, which Patterson did not do. As the warrant did not violate the Fourth Amendment by containing an inaccurate or too general description of the person to be arrested, this case is not like *United States v. Doe*, 703 F.2d 745, 747 (3d Cir. 1983), where the warrant was for the arrest of "Ed" (no last name given); or *Powe v. City of Chicago*, 664 F.2d 639, 644-48 (7th Cir. 1981), where the warrant was likewise held to be invalid- and in fact named the wrong person, see *id.* at 642 n. 2; *Gero v. Henault, supra*, 740 F.2d at 84; or the granddaddy of these cases, *West v. Cabell*, 153 U.S. 78, 85-86 (1984), where the Supreme Court merely held that a warrant to be valid must specifically name or identify the person to be arrested, which the warrant for Anthony Moseley's arrest did.

Neither can Patterson be charged with responsibility for the failure of the City of Harvey to make efforts to find out whether Brown was really Moseley. That was not Patterson's responsibility. The complaint contains no allegations from which it can be inferred that the City of Harvey is liable either. Although a prolonged confinement of an arrested person without a hearing to determine whether he is the person named in the warrant would be deprivation of liberty without due process of law and thus violate the Fourteenth Amendment, there is no suggestion that 24 hours was unreasonable in the circumstances Cf. *Baker v. McCollan*, 443 U.S. 137, 145-46 (1979); *Coleman v. Frantz*, 754 F.2d 719, 723-25 (7th Cir. 1985). Anyway there is no suggestion that the City of Harvey has a custom or policy of doing these things; and the city would not be liable for an isolated slip-up, since respondeat superior (the principle that

makes an employer liable for his employee's torts committed in the scope or furtherance of his employee's duties) is not available to plaintiffs in section 1983 suits. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978).

As for defendant Elrod, The Sheriff of Cook County when Patterson was arrested and jailed, we can find nothing unreasonable in a policy of placing the aliases of persons named in outstanding warrants in the LEADS data bank. The initial effort to execute the warrant against Moseley failed. He had fled the coop. He was presumable avoiding arrest by traveling under his alias, which fortunately was known to the authorities. The prudent thing to do was to make his alias available to all police officers in the area. If this is unreasonable, any person named in a warrant can avoid arrest indefinitely by the simple expedient of using an alias; the police could not be told about it. Brown argues that when applying for the warrant the sheriff's office should have told the magistrate about Moseley's alias. Brown's counsel actually stated at argument (perhaps unguardedly) that he would have no case if the alias had been listed in the warrant. But what protection would it be to the Anthony Browns of this world to have a suspect's aliases listed in the warrant along with the suspect's real name? If it was necessary in order to protect arresting officers or their superiors from suit should they arrest a person with the same name as the suspect's alias, aliases would no doubt be listed on warrants routinely. But little would be added if effective protection against false arrests, except possibly in cases, which is not this case (but may have been *Powe*), where the police, lacking solid information about the suspect's aliases and maybe not even knowing the suspect's real name, throw in a bunch of names ;in order to maximize their discretion in executing the warrant. If "Anthony Brown" were not an alias of Moseley we might have a different case, but there is no suggestion that it is not or that the sheriff's office was unreason-

able in thinking it was. The rule that Brown contends for would be as mischievous as it would be unhelpful, since once criminals realized that they could obtain a practical immunity from arrest by going under an alias not listed in the application for an arrest warrant they would be sure to adopt a new alias as soon an they learned that a warrant was outstanding.

If Sheriff Elrod is not liable to Brown, neither is Cook County, even if his policies are attributed to it on the theory that he is the relevant policy-maiking official for the county. See *Pembaur v. City of Cincinnati*, 106 S. Ct. 1292, 1298-99 (1986). The jailing of Patterson for 24 hours in Cook County Jail was not so unreasonable as to violate the due process clause, and anyway there is no suggestion that the length of this period was the result of a county policy. So none of the defendants named by Brown, nor others we can think of, are liable to him under the restrictive standards that govern liability for violation of section 1983. And yet as we said earlier we think there should be financial compensation for a person forced through no fault of his own to undergo the indignity of a false arrest and, until Moseley is arrested, to carry on his person at all times proof that he is not Moseley. At the very least we think that Brown should be reimbursed for whatever out-of-pocket expenses he incurred to raise bail and in missing work (if he did miss work). One might have thought that the institutional defendants would offer such compensation simply as a gesture of decency (maybe this opinon will induce them to do so); or in a prudent effort to forestall a suit costly to defend, by assuaging Brown's natural feeling of indignation at being arrested and charged for another man's crimes. Decency and institutional self-interest sometimes coincide. But it is not within our province to apply a remedy other than the limited, and inapplicable, remedy; that federal law provided for false arrest and imprisonment.

AFFIRMED

A true Copy:
Teste:

_____

Clerk of the United States Court of Appeals for the Seventh Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTHONY A. BROWN	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 85 C 6859
	)	
OFFICER S. PATTERSON,	)	
CITY OF HARVEY,	)	
COUNTY OF COOK,	)	
and RICHARD J. ELROD,	)	
	)	
Defendants.	)	

SUSAN GETZENDANNER, District Judge

MEMORANDUM OPINION AND ORDER

This civil rights action for false arrest, unreasonable search and seizure, and deprivation of liberty without due process of law is before the court on the motion of all defendants to dismiss. Fed.R.Civ.P. 12(b) (6). For the reasons set forth herein, the motion is granted.

According to the allegations of the complaint, which are taken as true for purposes of this motion, plaintiff Anthony A. Brown was stopped by Police Officer Patterson of the City of Harvey for a traffic violation on November 15, 1984. Officer Patterson was informed by an unknown member of the Harvey

Police Force that plaintiff was wanted on an outstanding warrant by defendant Cook County Sheriff Richard Elrod. Plaintiff was taken into custody, and was held in the Harvey Jail for about 24 hours. While there, Patterson and other officers told him he was being held on a warrant issued in the name of Anthony Moseley; plaintiff insisted he was not Anthony Moseley but the officers undertook no investigation to verify his protests.

On November 16, 1984, plaintiff was transferred into the custody of certain unknown Cook County deputies, and was transported to the Cook County jail where he remained until 2:30 p.m. on November 17, 1984, at which time he was released on $7,500 bail. On January 25, 1985, plaintiff appeared in court and the charges against him were dismissed because he was not the proper defendant. On February 1, 1985, two Cook County sheriffs arrived at this residence once again to arrest him on the warrant against Anthony Moseley, but did not make the arrest when plaintiff showed the officers a copy of the court order dismissing the case against him.

The warrant under which plaintiff was arrested contains Moseley's address, birthdate, and skin color. Plaintiff shares neither Moseley's birthdate nor address. The reason police suspected plaintiff of being Anthony Moseley was because Sheriff Elrod's office placed "Anthony Brown" as an alias of Moseley into the Law Enforcement Advisory Data System (LEADS). Plaintiff does not allege that the police lacked probable cause for believing that Moseley used this alias. The alias nowhere appears on the warrant, however, and plaintiff contends that his arrest and detention were therefore unconstitutional.

Defendants have moved to dismiss on the ground that the Constitution nowhere requires an alias to appear on a warrant, and that where the police reasonably and in good faith believe an innocent person to be a suspect named on a facially valid

warrant, the arrest of that innocent person, while possibly tortious under state law, is not unconstitutional. Although the issue is close, the court agrees.

As a general proposition, the arrest of a person mistakenly thought to be someone else is valid if the arrest is a), pursuant to a valid warrant, and b), the officer reasonably believes the person arrested to be the person named in the warrant. *See Hill v. California*, 401 U.S. 797 (1971); *Gero v. Henault*, 740 F.2d 78, 85 (1st Cir. 1984), *cert. denied*, 105 S.Ct. 965 (1985); *United States v. Glover*, 725 F.2d 120, 122 (D.C. Cir.), *cert. denied*, 466 U.S. 905 (1984); *United States v. McEachern*, 675 F.2d 618, 621 (4th Cir. 1982). Typically, the reasonableness of the officers' belief must be determined by the totality of the circumstances surrounding the arrest. *See Glover*, 725 F.2d at 122.

Absent an attack on the validity of the arrest, however, even a several-day detention of a person pursuant to a mistaken arrest does not violate due process of law. The seminal case in this area is *Baker v. McCollan*, 443 U.S. 137 (1979), in which the plaintiff was mistakenly taken into custody following a traffic citation when a routine warrant check indicated that he had violated bond on an outstanding narcotics charge. In actuality, the warrant was intended for the plaintiff's brother, who had been using the plaintiff's drivers license at the time of the prior arrest. Consequently, when the bond was revoked, the arrest warrant issued in the plaintiff's name. Despite repeated protests of mistaken identity, the plaintiff was held for eight days, first by the Dallas police department, and then by the Potter County police department. The plaintiff sued the Potter County officials under §1983 on the ground that their failure over a three-day period to check plaintiff's appearance against a file photograph violated the Constitution.

On these facts, the Court held that the plaintiff, being arrested pursuant to a facially valid warrant, could not complain

of his initial arrest, and that, "whatever claims this situation might give rise to under state tort law," the subsequent detention did not violate the Constitution. 443 U.S. at 144. The Court specifically rejected the plaintiff's argument that the police were obliged under the fourteenth amendment to investigate his protests of mistaken identification. The Court noted that while indefinite detention in the face of such protests would deprive the plaintiff of liberty without due process, "we are quite certain that a detention of three days over a New Year's weekend does not and could not amount to such a deprivation." 443 U.S. at 145.

In *Johnson v. Miller*, 680 F.2d 39 (7th Cir. 1982), the Seventh Circuit followed *Baker* to hold that police who arrest an innocent person pursuant to a valid warrant are under no immediate duty to investigate her claims of innocence even though the description in the warrant obviously differs from the person arrested. In that case, a woman named Annette Jenkins used the plaintiff's name and savings account to defraud the First National Bank of Chicago. The bank filled out a criminal complaint against plaintiff, but described her as a five-foot-seven black female. In fact, the plaintiff was a five-foot-five white female. The Court opined that the police officer, once satisfied that the name was right, did not act wrongfully "merely because the warrant he executed contained a description that did not match the appearance of Miss Johnson." *Id.* at 41.

It should be noted that both *Baker* and *Johnson* concerned situations where, because of the criminal's use of an alias, the warrants issued not only contained the plaintiffs' names but were in some sense specifically directed at the plaintiffs. In *Baker*, the drivers license numbers were the same; in *Johnson*, the plaintiff was arrested at her home, presumably because it matched the address shown on her savings account which had been criminally used. Thus, the reasonableness of the officers'

belief that the plaintiff was the person wanted for arrest was not expressly in issue. I previously drew this distinction in *Williams v. City of Chicago*, 525 F.Supp. 85, 87 (N.D. Ill. 1981), where the arrested plaintiff bore no relation to the person named in the warrant except for name, and concluded that the arrest was not "pursuant to" the warrant. I also held that "[a]t some point, an arrest becomes unconstitutionally unreasonable when made in the face of known discrepancies between a suspect's characteristics and those of a similarly-named fugitive." *Id.* at 88.

The Seventh Circuit in *Johnson* specifically disapproved of this suggestion, however, 680 F.2d at 42, and focused its discussion on the presence of plaintiff's name in the warrant rather than any other corroborative information. *Id.* at 41. *Johnson* thus suggests that arrests of persons bearing the same names as wanted fugitives are, as a matter of law, presumptively if not irrebuttably reasonable within the meaning of the fourth amendment. Indeed, in *Patton v. Przybylski*, No. 85 C 10044 (N.D. Ill. May 15, 1986, my colleague Judge Paul E. Plunkett followed *Baker* and *Johnson* to dismiss a §1983 case where the plaintiff, after being stopped for a traffic violation, was wrongly arrested due solely to the similarity between his name and that on an outstanding warrant. For various reasons (transferring of the plaintiff between authorities, intervention of a weekend in which no magistrate was available), the plaintiff was incarcerated for seven days. Judge Plunkett, though obviously sympathetic to the plaintiff's claim, felt constrained by *Baker* to dismiss the action.

Baker, *Johnson*, and *Patton* collectively make clear that, absent an extended detention or an attack on the validity of the plaintiff's arrest, persons wrongly arrested and incarcerated by reason of mistaken identification must look to state tort law for compensation. *Cf. Coleman v. Frantz*, 754 F.2d 719 (7th Cir. 1985) (18 day detention following mistaken arrest held uncon-

stitutional). In this case, plaintiff was detained for only forty-eight hours, and nowhere alleges that the police acted unreasonably, in bad faith, or without probable cause in believing that Anthony Moseley used the alias Anthony Brown. Absent such allegations, the case is simply one of identical names and is indistinguishable from *Patton*. Plaintiff's claims all concentrate on the failure of police authorities once he was arrested to undertake simple steps of identification which would have secured his immediate release. Such affirmative duties of investigation, as *Baker* makes vividly clear, are not constitutionally required. Nor are the discrepancies as to birthdate and address of constitutional significance. *See Hill*, 401 U.S. at 803 (noting that aliases and false identification are common among criminals.)

In his second responsive brief, however, plaintiff attacks the validity of the Moseley warrant on the ground that the "alias" under which Moseley was believed to operate nowhere appears on the warrant itself. Plaintiff cites the case of *West v. Cabell*, 153 U.S. 78, 85 (1894), for the proposition that "a warrant for the arrest of a person charged with crime must truly name him, or describe him sufficiently to identify him." Because the warrant in this case neither names nor describes plaintiff, he contents that his arrest is unconstitutional.

This argument, though initially persuasive, is unsupported by a close reading of *West*. In that case, a federal marshall had a warrant for "James West," and arrested plaintiff Vandy West by mistake. Vandy West was later released and filed suit against the arresting officer. The defense was *not* that the officer mistakenly believed Vandy West to be James but that the warrant was in fact intended for Vandy West. The trial court instructed the jury that they could find for defendants on this rationale, and the Supreme Court reversed. The Court held that the warrant was invalid under the fourth amendment if intended

for Vandy West, since it neither named nor described him. *West* is still cited today as seminal authority for interpreting the fourth amendment requirement that arrest and search warrants "particularly describ[e]...the persons or things to be seized." See *Gero v. Henault*, 740 F.2d at 83; *Powe v. City of Chicago*, 664 F.2d 639, 645 (7th Cir. 1981).

The court finds, as did the First Circuit in *Gero*, that *West* concerned the situation "where the right person was arrested under the wrong warrant," and cannot be analogized to the case where "the wrong person was arrested." 740 F.2d at 83. In the present case, the warrant gave Moseley's real name, and plaintiff was mistakenly arrested in the belief that he was Moseley. As noted by the Seventh Circuit in *Powe*, "[a]n arrest warrant that correctly names the person to be arrested generally satisfies the fourth amendment's particularity requirement, and no other description of the arrestee need be included..." 664 F.2d at 645. Thus, the arrest warrant in this case as alleged satisfied the particularity requirement of the fourth amendment. While plaintiff was not himself named in the warrant, the police had reason to believe that Moseley went under plaintiff's name, and therefore had reason to believe that plaintiff was in fact Moseley.

Plaintiff interprets *West* differently, and argues that, where an arrestee's name does not itself appear in the warrant used to justify his arrest, whatever identifying criteria is used to make the arrest must also be contained in the warrant. Such an extreme position was implicitly if not explicitly rejected in *United States v. McEachern*, 675 F.2d 618 (4th Cir. 1982). In that case, a warrant issued for Nurudeen Haseeb a/k/a/ Jimmie McEachern. The National Crime Information Center (NCIC) erroneously indicated that Haseeb was also known as Ronnie McEachern. In fact Ronnie was Jimmie's brother. Pursuant to the NCIC information, the agents arrested Ronnie, and later

discovered that Ronnie was wanted for a separate crime. Ronnie claimed that his arrest was illegal, but the Fourth Circuit, relying on *Hill v. California*, 401 U.S. 797 (1971), held that the police reasonably and in good faith believed that Ronnie and his brother were one and the same person.

McEachern is factually distinguishable because the arrestee had identified himself to the authorities as Nuruden Haseeb and closely matched the known physical criteria of the sought-after defendant. Thus there was little doubt but that the police had probable cause for believing the brothers to be one person. *McEachern* is nonetheless relevant since it indicates that mere discrepancy in name between the person identified by warrant and the person arrested does not *per se* invalidate the arrest: insofar as plaintiff argues that the warrant is invalid for not containing his name, his argument is rejected.

McEachern also indicates, however, that whether a police officer reasonably believes an arrested and a sought individual to be the same often entails a highly factual inquiry. Since the present record is devoid of facts enabling such an inquiry, plaintiff implicitly argues that the motion to dismiss must be denied and discovery be undertaken. The problem with this suggestion is that plaintiff nowhere alleges that the officers unreasonably and without probable cause believed him to be Anthony Moseley, or that the Cook County police fed potentially unreliable alias information into the LEADS computer. *Compare Powe*, 664 F.2d at 647 (where police arbitrarily or incorrectly choose name to place on warrant, fourth amendment requires that warrant also contain a description of the intended arrestee sufficient to identify him.) Rather, plaintiff simply argues that known alias information must always appear on the warrant itself: such an imposition, however sound as a matter of policy, is not required by the federal Constitution.

Plaintiff's failure to allege that the alias information was

itself unreliable to bring this case within the ambit of *West* and *Power* and to distinguish *Baker* or its progeny. Plaintiff is represented by able counsel and therefore the court will not infer allegations of police misfeasance from between the lines of his complaint. Accordingly, plaintiff has failed to allege a fourth amendment violation in connection with his arrest, and his fourteenth amendment claims must fall with his fourth amendment claims under the Supreme Court decision of *Baker v. McCollan.*

The motions of the various defendants to dismiss are granted. Dismissal is without prejudice to a state law claim against the defendants (such as false imprisonment) arising out of the facts alleged herein. The status date of September 11, 1986 is stricken.

It is so ordered.

Susan Getzendanner
United States District Judge

Dated: August 29, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTHONY A. BROWN	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 85 C 6859
	)	
OFFICER S. PATTERSON,	)	SUSAN
CITY OF HARVEY,	)	GETZENDANNER,
COUNTY OF COOK,	)	District Judge
and RICHARD J. ELROD,	)	
	)	
Defendants.	)	

"FIRST AMENDED COMPLAINT"

"This is an action for damages against an officer of the Harvey Police Department, the municipality of Harvey, certain officials of Cook County Sheriff's Department, and the County of Cook, who under color of state law, without legal justification, wrongfully and illegally arrested and detained the Plaintiff, violating his due process rights guaranteed by the Fourteenth Amendment to the U.S. Constitution and his rights to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment..

"1. This action is brought pursuant to 42 U.S.C. sec. 1983 and the Fourth, Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction is based on Title 28

U.S.C. sec. 1343, and the aforementioned statutory and constitutional provisions.

"2. Plaintiff Anthony A. Brown is a resident of Phoenix, Cook County, Illinois.

"3. Defendant S. Patterson (Star #165) and other unknown Harvey Police Officers at all times pertinent hereto were acting in their official capacities as police officers of the City of Harvey.

"4. Defendant City of Harvey is a municipality duly incorporated under the laws of the State of Illinois.

"5. Defendant County of Cook is a county duly organized under the laws of the State of Illinois.

"6. Defendant Richard Elrod is the Sheriff of Cook County and is the individual ultimately responsible for setting policy both for the Cook County Sheriff's Department and for the County of Cook with regard to determining who is detained and arrested pursuant to a Cook County Sheriff's warrant.

"7. That on November 15, 1984, Plaintiff Anthony A. Brown was stopped by Officer S. Patterson of the Harvey Police Department for a traffic violation. Subsequent to the traffic stop, Officer Patterson was informed by an unknown member of the Harvey Police Department that the Plaintiff was wanted on an outstanding warrant by Defendant Cook County Sheriff Elrod.

"8. That Plaintiff's Illinois driver's license indicated his address as 514 E. 154th Street, Phoenix, Illinois, and a date of birth of July 18, 1960.

"9. That Plaintiff was arrested by Officer Patterson and transported to the Harvey Police Department where he was held in Jail for about 24 hours until being placed into the custody of unknown Deputy Cook County Sheriffs.

"10. That at the Harvey Police Station, the Plaintiff was informed by Officer Patterson and the other unknown officers

that he was being held on a warrant issued in the name of Anthony Moseley, and that he was Anthony Moseley.

"11. That Defendant Patterson made the decision to detain and hold the Plaintiff based on policy of the City of Harvey to do so without further investigation.

"12 That Plaintiff informed the defendant officers that he was not Anthony Moseley, that he did not know Anthony Moseley and never used the name Anthony Moseley.

"13. That despite Plaintiff's repeated assertions that he was not Anthony Moseley but Anthony Brown, Defendant Patterson and other unknown Harvey Police Officers undertook no investigation to establish his identity, including the taking of the Plaintiff's fingerprints.

"14. The policy of the City of Harvey and Harvey Police Department does not require the above-mentioned investigation.

"15. That on November 16, 1984, Plaintiff was transported to the Cook County Jail by unknown deputy sheriffs.

"16. That the policy and practice of the Cook County Sheriff's Department is not to fingerprint or to carry out other identificaton procedures on individuals they transport to County Jail from other municipal jails.

"17. That pursant to this policy and practice, the Cook County Sheriff's Department did not fingerprint the Plaintiff or otherwise attempt to determine the Plaintiff's identity, although the Plaintiff's name did not appear on the warrant.

"18. As a result of this inaction by the Cook County Sheriff's Department, Plaintiff was incarcerated in the Cook County Jail until on or about 2:30 p.m., on November 17, 1984, at which time he was released on $7,500 bail.

"19. That the outstanding warrant in the name of Anthony Moseley was for attempted burglary/possession of burglary tools. That this warrant was issued on August 21, 1984, and

listed Moseley's address as 2822 South Burnham, Chicago, Illinois 60620; and described him as a male, black with the birthdate of July 30, 1960.

"20. Even a cursory examination of the outstanding warrant would have revealed that Plantiff Anthony A. Brown was not the subject of the warrant, since the warrant was only issued in the name of Anthony Moseley, and Plaintiff Brown did not have the same birthdate or address of the individual Moseley described in the warrant. Also, Plaintiff's name never appears on the face of the warrant.

"21. That Defendant Sheriff Elrod has a policy of placing the alias of individuals named on warrants into the Law Enforcement Advisory Data Systems (LEADS). This is regardless of whether the alias appears on the warrant.

"22. That Defendant Sheriff Elrod has a policy of encouraging and influencing other law enforcement agencies to detain and arrest individuals on this alias information regardless of whether the alias appears on the warrant.

"23. This above-mentioned policy of Defendant Elrod caused the Plaintiff to be detained and arrested, although there was no warrant for Plaintiff Anthony Brown.

"24. As a direct result of the intentional, reckless and deliberately indifferent conduct of the defendants, Plaintiff Brown was incarcerated pursuant to the outstanding warrant and was deprived of his personal liberty for almost 48 hours by being incarcerated both in the Harvey Police Department Lock-Up and the Cook County Jail.

"25. That on January 25, 1984, Plaintiff appeared in court and the charges against him were dismissed, with Judge Hourihane making notation that the wrong defendant was in court, warrant to re-issue.

"26. That on February 1, 1985, Phoenix Police Officer Leroy Tate and two Cook County Sheriffs arrived at Plaintiff's resi-

dence to arrest him on the outstanding warrant against Anthony Moseley.

"27. That Plaintiff informed Officer Leroy Tate that his name was Anthony A. Brown and not Anthony Moseley, and showed the officer a copy of the court half-sheet dismissing the case against him. After confirming Plaintiff's identity, the officer did not make the arrest.

"28. That as a result of the actions described above, Plaintiff has been forced to keep on his person at all times, a copy of the court half-sheet to avoid arrest on the outstanding warrant.

"29. The above-described conduct of the defendants was intentionally reckless, and said defendants acted with deliberate indifference indicating reckless disregard for the constitutional rights of Plaintiff Brown.

"30. The above-described conduct of the defendants was taken under color of state law and in the course of their official duties. The conduct of the defendants deprived Plaintiff Brown of his rights under 42 U.S.C. sec. 1983 by:

"a. depriving him of his right to be free from unwar ranted arrests, searches, and seizures as guaranteed by the Fourth and Fourteenth Amendment to the U.S. Constitution:

"b. depriving Plaintiff of his right to be free from unlaw ful restraint as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

"WHEREFORE, Plaintiff Brown prays:

"A. For the judgement against the non-municipal defen dants, jointly and severally, in an amount to be determined by a jury after trial as punitive damages;

"B. For judgment against the defendants, jointly and sever ally, in an amount to be determined by; a jury after trial as compensatory damages;

"C. Declare the policies of defendants violative of the United States Constitution; and

"D. That Plaintiff recover the costs and reasonable attorney's fees of this action."